

1 HOUSE BILL NO. 746

2 INTRODUCED BY D. LEWIS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A LOCAL DEPARTMENT OR BOARD OF HEALTH
5 TO REVIEW SUBDIVISIONS THAT CREATE FIVE OR FEWER PARCELS; AUTHORIZING A LOCAL
6 DEPARTMENT OR BOARD OF HEALTH TO EMPLOY OR CONTRACT WITH A REGISTERED
7 PROFESSIONAL ENGINEER OR A REGISTERED SANITARIAN TO REVIEW SUBDIVISIONS UNDER THE
8 SANITATION IN SUBDIVISIONS LAWS; PROVIDING AN EXCEPTION FOR REVIEW OF PUBLIC WATER
9 SUPPLY SYSTEMS AND PUBLIC SEWAGE SYSTEMS; REVISING THE DEFINITION OF "REVIEWING
10 AUTHORITY"; REQUIRING THAT SUBDIVISIONS COMPLY WITH THE NONDEGRADATION POLICY AND
11 RULES; AUTHORIZING THE REVIEWING AUTHORITY TO ADOPT FEES BY RULE, ORDINANCE, OR
12 RESOLUTION FOR REVIEWING SUBDIVISIONS AND CONDUCTING INSPECTIONS AND ENFORCEMENT
13 ACTIVITIES; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 76-4-102, 76-4-104, 76-4-105,
14 76-4-106, 76-4-108, 76-4-125, 76-4-126, AND 76-4-129, MCA; AND PROVIDING AN APPLICABILITY DATE."
15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
17

18 **Section 1.** Section 76-4-102, MCA, is amended to read:

19 **"76-4-102. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following
20 definitions apply:

21 (1) "Adequate municipal facilities" means municipally, publicly, or privately owned facilities that supply
22 water, treat sewage, or dispose of solid waste for all or most properties within the boundaries of a municipality
23 and that are operating in compliance with Title 75, chapters 5 and 6.

24 (2) "Board" means the board of environmental review.

25 (3) "Department" means the department of environmental quality.

26 (4) "Extension of a public sewage system" means a sewerline that connects two or more sewer service
27 lines to a sewer main.

28 (5) "Extension of a public water supply system" means a waterline that connects two or more water
29 service lines to a water main.

30 (6) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid

1 waste and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be
2 transported or distributed.

3 (7) "Mixing zone" has the meaning provided in 75-5-103.

4 (8) "Public sewage system" or "public sewage disposal system" means a public sewage system as
5 defined in 75-6-102.

6 (9) "Public water supply system" has the meaning provided in 75-6-102.

7 (10) "Registered professional engineer" means a person licensed to practice as a professional engineer
8 under Title 37, chapter 67.

9 (11) "Registered sanitarian" means a person licensed to practice as a sanitarian under Title 37, chapter
10 40.

11 (12) "Reviewing authority" means the ~~department or a local department or board of health certified to~~
12 ~~conduct a review under~~ entity that conducts a review as provided in 76-4-104.

13 (13) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter, or building
14 requiring facilities for the supply of water or the disposition of sewage or solid waste or the construction of water
15 supply or sewage or solid waste disposal facilities until the department has approved plans for those facilities.

16 (14) "Sewer service line" means a sewerline that connects a single building or living unit to a public
17 sewage system or to an extension of a public sewage system.

18 (15) "Solid waste" has the meaning provided in 75-10-103.

19 (16) "Subdivision" means a division of land or land so divided that creates one or more parcels
20 containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels
21 may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and any condominium or
22 area, regardless of size, that provides permanent multiple space for recreational camping vehicles or mobile
23 homes.

24 (17) "Water service line" means a waterline that connects a single building or living unit to a public water
25 supply system or to an extension of a public water supply system."

26

27 **Section 2.** Section 76-4-104, MCA, is amended to read:

28 **"76-4-104. Rules for administration and enforcement -- review of subdivisions.** (1) The department
29 shall, subject to the provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards,
30 necessary for administration and enforcement of this part.

1 (2) The Subject to subsection (4), the rules and standards must provide the basis for approving
 2 subdivisions for various types of public and private water supplies, sewage disposal facilities, storm water
 3 drainage ways, and solid waste disposal. The rules and standards must be related to:

- 4 (a) size of lots;
 5 (b) contour of land;
 6 (c) porosity of soil;
 7 (d) ground water level;
 8 (e) distance from lakes, streams, and wells;
 9 (f) type and construction of private water and sewage facilities; and
 10 (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry,
 11 recreation, and wildlife.

12 ~~(3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions by~~
 13 ~~a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board~~
 14 ~~of health employs a registered sanitarian or a registered professional engineer and if the department certifies~~
 15 ~~under subsection (4) that the local department or board is competent to conduct the review.~~

16 ~~—— (b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or~~
 17 ~~board of health may not review public water supply systems, public sewage systems, or extensions of or~~
 18 ~~connections to these systems.~~

19 ~~—— (ii) A local department or board of health may be certified to review subdivisions proposed to connect~~
 20 ~~to existing municipal water and wastewater systems previously approved by the department if no extension of~~
 21 ~~the systems is required.~~

22 ~~—— (4) The department shall also adopt standards and procedures for certification and maintaining~~
 23 ~~certification to ensure that a local department or board of health is competent to review the subdivisions as~~
 24 ~~described in subsection (3).~~

25 ~~—— (5) The department shall review those subdivisions described in subsection (3) if:~~

26 ~~—— (a) a proposed subdivision lies within more than one jurisdictional area and the respective governing~~
 27 ~~bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision;~~
 28 ~~or~~

29 ~~—— (b) the local department or board of health elects not to be certified.~~

30 ~~(6)~~(3) The rules must further provide for:

- 1 (a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review
2 under this part and other documentation showing the layout or plan of development, including:
- 3 (i) total development area; and
4 (ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage
5 disposal;
- 6 (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and
7 dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;
- 8 (c) evidence concerning the potability of the proposed water supply for the subdivision;
- 9 (d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;
- 10 (e) standards and technical procedures applicable to storm drainage plans and related designs, in order
11 to ensure proper drainage ways;
- 12 (f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil
13 testing and site design standards for on-lot sewage disposal systems when applicable;
- 14 (g) standards and technical procedures applicable to water systems;
- 15 (h) standards and technical procedures applicable to solid waste disposal;
- 16 (i) criteria for granting waivers and deviations from the standards and technical procedures adopted
17 under subsections ~~(6)(e)~~ (3)(e) through ~~(6)(h)~~ (3)(h);
- 18 (j) evidence to establish that, if a public water supply system or a public sewage system is proposed,
19 provision has been made for the system and, if other methods of water supply or sewage disposal are proposed,
20 evidence that the systems will comply with state and local laws and regulations that are in effect at the time of
21 submission of the preliminary or final plan or plat; and
- 22 (k) evidence to demonstrate that appropriate easements, covenants, agreements, and management
23 entities have been established to ensure the protection of human health and state waters and to ensure the
24 long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.
- 25 (4) A subdivision may only be approved if it complies with the nondegradation policy established in
26 75-5-303 and the rules adopted to implement that policy.
- 27 (5) (a) Except as provided in subsection (5)(b) and subject to subsection (5)(c), a subdivision must be
28 reviewed:
- 29 (i) if a subdivision creates five or fewer parcels, by the local department or board of health;
30 (ii) if a subdivision creates more than five parcels:

- 1 (A) by the local department or board of health; or
- 2 (B) if the local department or board of health does not accept reviewing authority status and notifies the
3 department within 10 days of receipt of a subdivision application, by the department; and
- 4 (iii) if a subdivision lies within more than one jurisdictional area and the local reviewing authorities are
5 in disagreement concerning approval of or conditions to be imposed on the proposed subdivision, by the
6 department.
- 7 (b) A subdivision application that requires review of public water supply systems, public sewage
8 systems, or extensions of these systems must be reviewed as provided in subsection (6).
- 9 (c) The reviewing authority must employ or contract with a registered professional engineer or a
10 registered sanitarian to conduct the review.
- 11 ~~(7)~~(6) A local department or board of health may not review public water supply systems, public sewage
12 systems, or extensions of these systems. If the reviewing authority is a local department or board of health, it
13 shall provide a copy of the subdivision application to the department within 5 days of receipt of the application.
14 The reviewing authority shall notify the department of its recommendation for approval or disapproval of the
15 subdivision not later than 50 days from its receipt of the subdivision application. The department shall review
16 the public water supply system, public sewage system, or extension of these systems and make a final decision
17 on the subdivision within 10 days after receiving the recommendation of the local reviewing authority, but not
18 later than 60 days after the submission of a complete application, as provided in 76-4-125. If the reviewing
19 authority is a local department or board of health, the department may only deny or condition a certificate of
20 subdivision approval based on its review of the public water supply system, public sewage system, or extension
21 of these systems.
- 22 ~~(8)~~(7) Review and certification or denial of certification that a division of land is not subject to sanitary
23 restrictions under this part may occur only under those rules in effect when a complete application is submitted
24 to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot
25 was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied.
26 In the absence of specific requirements, minimum standards necessary to protect public health and water quality
27 apply.
- 28 ~~(9)~~(8) The reviewing authority may not deny or condition a certificate of subdivision approval under this
29 part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition
30 imposition. The statement must include:

- 1 (a) the reason for the denial or condition imposition;
 2 (b) the evidence that justifies the denial or condition imposition; and
 3 (c) information regarding the appeal process for the denial or condition imposition."
 4

5 **Section 3.** Section 76-4-105, MCA, is amended to read:

6 "**76-4-105. Subdivision fees -- ~~subdivision program funding use of fees.~~** (1) The reviewing authority
 7 may charge fees that do not exceed actual costs for reviewing subdivisions, conducting inspections pursuant
 8 to 76-4-107, and conducting enforcement activities pursuant to 76-4-108.

9 (2) The department shall adopt rules setting fees and a local reviewing authority shall, by ordinance or
 10 resolution, set forth fees that do not exceed actual costs for reviewing plats and subdivisions, conducting
 11 inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108 authorized under
 12 subsection (1). The rules must provide for a schedule of fees to be paid by the applicant to the department or,
 13 if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority's jurisdiction.

14 The

15 (3) All fees collected pursuant to this section must be used for review of plats and subdivisions,
 16 conducting inspections pursuant to 76-4-107, and conducting enforcement activities pursuant to 76-4-108. The
 17 fees must be based on the complexity of the subdivision, including but not limited to:

- 18 (a) the number of lots in the subdivision;
 19 (b) the type of water system to serve the development;
 20 (c) the type of sewage disposal to serve the development; and
 21 (d) the degree of environmental research necessary to supplement the review procedure.

22 ~~(2) The department shall adopt rules to determine the distribution of fees to the local reviewing authority~~
 23 ~~for reviews conducted pursuant to 76-4-104, inspections conducted pursuant to 76-4-107, and enforcement~~
 24 ~~activities conducted pursuant to 76-4-108."~~

25
 26 **Section 4.** Section 76-4-106, MCA, is amended to read:

27 "**76-4-106. Cooperation with other governmental agencies.** (1) The reviewing authority may require
 28 the use of records of all state, county, and municipal agencies and may seek the assistance of those agencies.

29 (2) State, county, and municipal officers and employees, including local health officers and sanitarians,
 30 shall cooperate with the reviewing authority in furthering the purposes of this part so far as is practical and

1 consistent with their own duties.

2 (3) A local reviewing authority ~~without a registered sanitarian or a registered professional engineer to~~
3 ~~conduct a review under this part~~ may contract with one of the following to conduct the review required under this
4 part:

5 (a) another local reviewing authority for the services of its registered sanitarian or registered
6 professional engineer ~~to conduct the review;~~

7 (b) a registered sanitarian or a registered professional engineer; or

8 (c) the department."

9

10 **Section 5.** Section 76-4-108, MCA, is amended to read:

11 **"76-4-108. Enforcement.** (1) If the reviewing authority has reason to believe that a violation of this part
12 or a rule adopted under this part has occurred, the reviewing authority may have written notice and an order
13 served personally or by certified mail on the alleged violator or the alleged violator's agent. The notice must state
14 the provision alleged to be violated, the facts alleged to constitute the violation, the corrective action required
15 by the reviewing authority, and the time within which the action is to be taken. The alleged violator may, no later
16 than 30 days after service of a notice and order under this section, request a hearing before the governing body
17 of the local reviewing authority ~~if it issued the notice of violation~~ or the board if the reviewing authority is the
18 ~~department issued the notice of violation~~. A request for a hearing must be filed in writing with the appropriate
19 entity and must state the reason for the request. If a request is filed, a hearing must be held within a reasonable
20 time.

21 (2) In addition to or instead of issuing an order, the reviewing authority may initiate any other appropriate
22 action to compel compliance with this part.

23 ~~(3) The provisions of this part may be enforced by a reviewing authority other than the department or~~
24 ~~board only for those divisions described in 76-4-104(3). If a local reviewing authority fails to adequately enforce~~
25 ~~the provisions of this part, the department or the board may compel compliance with this part under the~~
26 ~~provisions of this section.~~

27 ~~———— (4) When a local reviewing authority exercises the authority delegated to it by this section, the local~~
28 ~~reviewing authority is legally responsible for its actions under this part.~~

29 ~~———— (5)(3) If the department or a local reviewing authority determines that a violation of this part has~~
30 ~~occurred, the department or the local reviewing authority may revoke its certificate of approval for the subdivision~~

1 and reimpose sanitary restrictions following written notice to the alleged violator. Upon revocation of a certificate,
 2 the person aggrieved by revocation may request a hearing. A hearing request must be filed in writing within 30
 3 days after receipt of the notice of revocation and must state the reason for the request. The hearing is before
 4 the board if the department revoked the certificate or before the local reviewing authority if the local reviewing
 5 authority revoked the certificate.

6 ~~(6)(4)~~ The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4,
 7 part 6, apply to a hearing held by the board under this section."

8

9 **Section 6.** Section 76-4-125, MCA, is amended to read:

10 **"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except
 11 as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing
 12 authority. The review by the reviewing authority must be as follows:

13 (a) At any time after the developer has submitted an application under the Montana Subdivision and
 14 Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must
 15 include preliminary plans and specifications for the proposed development, whatever information the developer
 16 feels necessary for its subsequent review, and information required by the reviewing authority. Subdivision fees
 17 assessed by the reviewing authority must accompany the application. If the subdivision application requires
 18 review of a public water supply system, public sewage system, or an extension of these systems, the fee
 19 charged by the department for review of these systems or extensions must also accompany the application. If
 20 the proposed development includes onsite sewage disposal facilities, the developer shall notify the designated
 21 agent of the local board of health prior to presenting the subdivision application to the reviewing authority. The
 22 agent may conduct a preliminary site assessment to determine whether the site meets applicable state and local
 23 requirements.

24 (b) Except as provided in 75-1-208(4)(b), the ~~department~~ reviewing authority shall make a final decision
 25 on the proposed subdivision within 60 days after the submission of a complete application and payment of fees
 26 to the reviewing authority unless an environmental impact statement is required, at which time this deadline may
 27 be increased to 120 days. The reviewing authority may not request additional information for the purpose of
 28 extending the time allowed for a review and final decision on the proposed subdivision. If the ~~department~~
 29 reviewing authority approves the subdivision, the ~~department~~ reviewing authority shall issue a certificate of
 30 subdivision approval indicating that it has approved the plans and specifications and that the subdivision is not

1 subject to a sanitary restriction.

2 (2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to
3 the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade
4 the provisions of this part, are not subject to review:

5 (a) the exclusions cited in 76-3-201 and 76-3-204;

6 (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel,
7 provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and
8 that the division does not fall within a previously platted or approved subdivision;

9 (c) divisions made for purposes other than the construction of water supply or sewage and solid waste
10 disposal facilities as the department specifies by rule;

11 (d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter
12 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127,
13 that adequate storm water drainage and adequate municipal facilities will be provided; and

14 (e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating
15 a parcel from the tract for purposes of transfer if:

16 (i) the remainder is served by a public or multiple-user sewage system approved before January 1,
17 1997, pursuant to local regulations or this chapter; or

18 (ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to
19 April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

20 (3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that,
21 prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be
22 segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features
23 sufficient to accommodate a replacement drainfield."
24

25 **Section 7.** Section 76-4-126, MCA, is amended to read:

26 **"76-4-126. Right to hearing.** (1) Upon a denial of approval of subdivision plans and specifications
27 relating to environmental health facilities, the person who is aggrieved by the denial may request a hearing
28 before:

29 (a) the board, if the department is the reviewing authority; or

30 (b) the governing body of the local reviewing authority.

1 (2) A hearing request must be filed, in writing, within 30 days after receipt of the notice of denial and
2 must state the reason for the request. The contested case provisions of the Montana Administrative Procedure
3 Act, Title 2, chapter 4, part 6, apply to a hearing held by the board under this section.

4 ~~(2)~~(3) If the grounds for a denial of approval under this part include noncompliance with local laws or
5 regulations other than those adopting, pursuant to 50-2-116, state minimum standards for the control and
6 disposal of sewage, the board shall upon receipt of a hearing request refer the local compliance issues to the
7 appropriate local authority. After opportunity for a hearing, the local authority shall issue a determination
8 regarding the local compliance issues, and the board shall incorporate the determination of the local authority
9 in the board's final decision."

10

11 **Section 8.** Section 76-4-129, MCA, is amended to read:

12 **"76-4-129. Joint application form and concurrent review.** (1) ~~Within 90 days after July 1, 1977, the~~
13 The department shall prepare and distribute a joint application form that can be used by an applicant to apply
14 for approval of a subdivision under the provisions of this part and the provisions of chapter 3. When an
15 application is received by either the ~~department~~ reviewing authority or a ~~local government~~ the local governing
16 body pursuant to chapter 3, the department reviewing authority or ~~local government~~ governing body is
17 responsible for forwarding the appropriate parts of the application to the other entity.

18 (2) The review required by this part and the provisions of chapter 3 ~~shall~~ must occur concurrently."

19

20 **NEW SECTION. Section 9. Appropriation.** There is appropriated \$50,000 from the state special
21 revenue fund provided for in 76-4-132 to the department for each of the fiscal years 2004 and 2005 to be used
22 as provided in 76-4-105.

23

24 **NEW SECTION. Section 10. Applicability.** [This act] applies to subdivision applications submitted on
25 or after January 1, 2004.

26

- END -